

No. 364

IN THE

Supreme Court of the United States

_____, TERM, A. D. 1948.

WALTER FLISS and HELEN FLISS,
Petitioners.

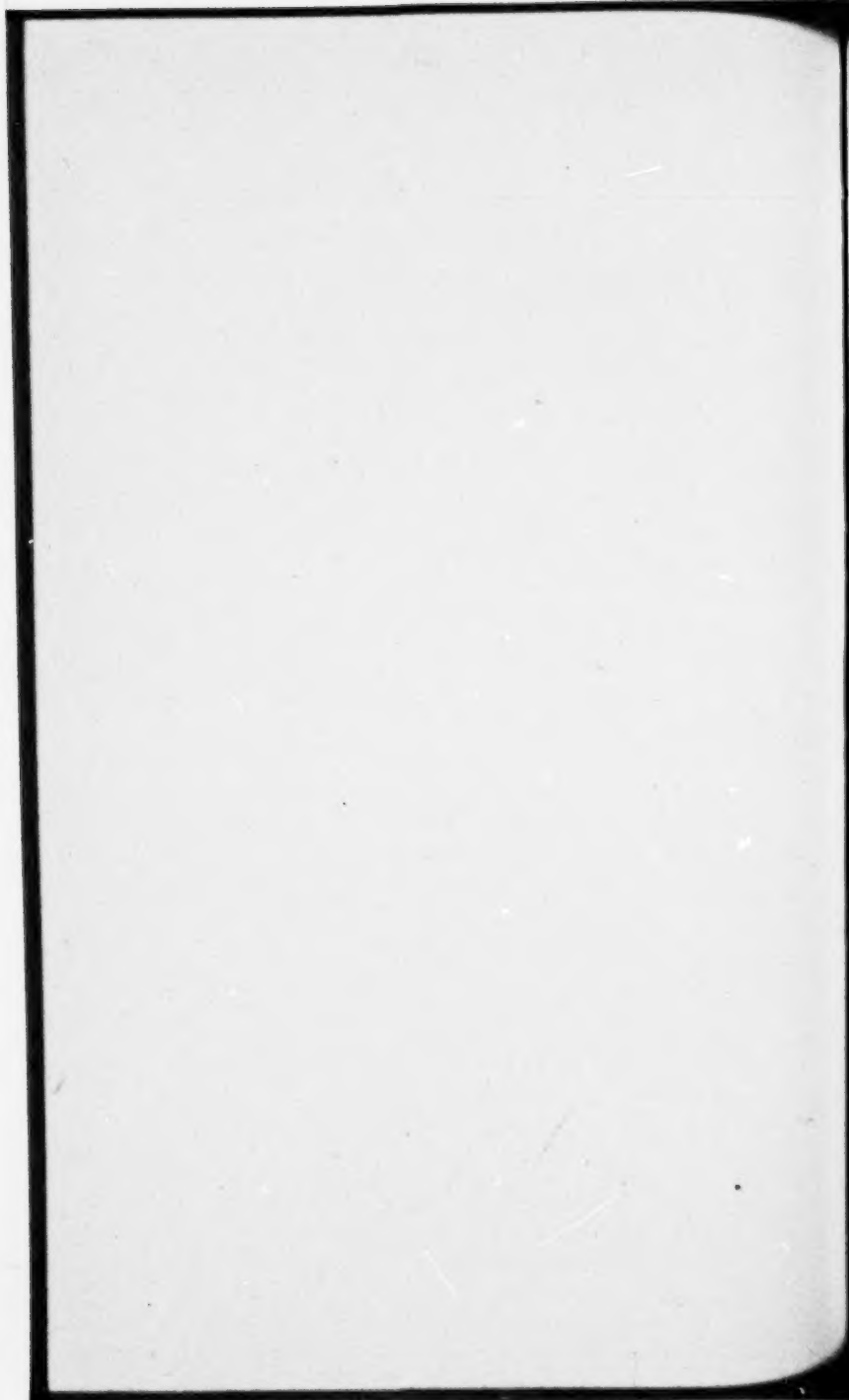
VS.

TIGHE E. WOODS, ACTING HOUSING EXPEDI-
TOR, OFFICE OF HOUSING EXPEDITOR, FOR
AND ON BEHALF OF THE UNITED STATES,
Respondent.

PETITION FOR CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH
CIRCUIT AND BRIEF IN SUPPORT THEREOF.

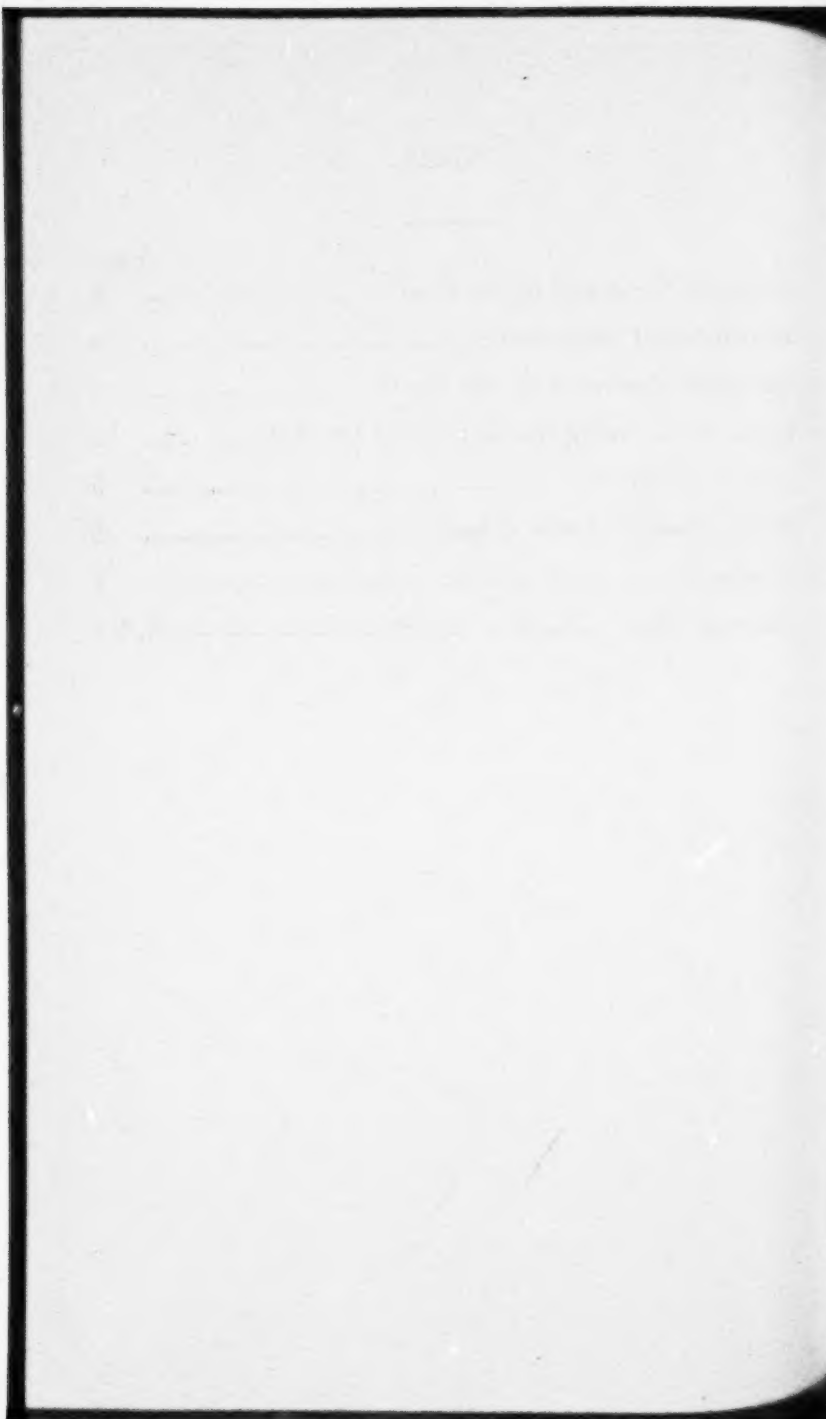
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CLARENCE W. HORTSMAN,
Of Counsel.



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CIRCUIT.

To The Honorable Chief Justice and Associate Justices
of The Supreme Court of The United States.

May It Please The Court:

Your Petitioners Walter Fliss and Helen Fliss, by their
counsel respectfully represent to this Honorable Court:

I.

SUMMARY STATEMENT OF THE CASE.

This action was brought by the respondent herein, in the District Court at Chicago, Illinois, alleging the petitioners herein were engaged in, or about to engage in acts and practices in violation of Section 206-A of the emergency price control act of 1942, as amended, (56 Stat. 23; 50 U. S. C. App. Sec. 901 et seq.) and in violation of Regulation of the Housing Expediter Section 4, in that the petitioner herein had discontinued to render services to the occupants of petitioner's building, including the services of "janitor" services, "heat" and "hot water" and "gas" and "electric" services (R. 2-4), and prayed for a permanent injunction commanding petitioners herein to restore the said services above set forth.

Petitioners herein defended on the grounds that the "Housing Regulations did not forbid the discontinuance of the services (Sec. 2 Controlled Reg.) and that they had not collected any rents whatsoever after the services were so discontinued, (Exhibits attached to complaint R. 9-11-12-13) (R. 29) and that they were not in violation of any law statute, or regulation, and on numerous Constitutional grounds.

Upon the filing of the complainant, the District Court, on application of the attorneys for the Housing Expediter, entered a temporary mandatory injunction, commanding the restoration of the said services (without notice), and upon hearing on the merits of the case made the injunction permanent and found the petitioner Walter Fliss in Contempt of Court and directed his imprisonment until he should have complied with the temporary order of Court.

Appeal was taken to the United States Circuit Court of Appeals for the Seventh circuit, and the appeal court affirmed the ruling of the District Court, and held that your petitioners were required to obey the order of the District Court, and comply with the injunctional decree, and that the "findings of facts" and "conclusions of law" of the District Court are unassailable.

The Findings of Facts and the pleadings all show, (R. 9-11-12-13) and (R. 55) that the petitioners did not receive any rents whatsoever.

The findings of the Circuit Court of Appeals also (R.....) show the petitioners did not receive any rents from or after Oct. 1st 1947.

This petition seeks a writ of Certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit.

The property in question consists of a twenty four flat building built in a "U" shape, each section of twelve flats, located on the North-West side of the City of Chicago. The twelve flats to the North are not involved in this proceedings, but only the twelve apartments to the south. At the time of the complaint, the premises had only Five occupants in five separate flats.

Notice was served upon all occupants on or about the 1st of April 1947 to vacate the premises had by them, on the 1st day of October 1947. That the occupants refused to so vacate, and caused the institution of these proceedings, by the housing expediter on the 4th day of Nov. 1947.

The housing expediter fearing the property owners may have found a mode of defeating the control of their property, represented to the District Court that it had the right to forestall the denial of services to buildings, when in fact they did not have that right.

Respondent proceeded upon the theory that there was a regulation by the housing expediter to that effect, when in truth and fact the regulations provide expressly to the contrary.

The uncontradicted evidence, and the pleadings show that the occupants tendered the rental and it was refused. Tender never has amounted to payment (within the Act), so that a property owner should be bound by the results thereof, as though he had received the same.

II.

Jurisdictional Statement.

Jurisdiction is invoked under statute, Rent Control Act of 1942 Section 206 B of the Housing and Rent Act, of 1947 as amended and extended (Public Law 129, 80th Congress), and under Sections 1-B, 205 (A) and 205 (C) of the emergency Price Control Act of 1942.

III.

Questions Presented to the Court.

A. Various Constitutional questions hereinafter set forth.

B. Rights of occupants after notice served to vacate.

C. The right of the Court to find the petitioners guilty of violation of law, for collecting over ceiling rental, when they did not collect any rental at all.

D. The right of the Court to enforce rules and regulations of the Rent Control office with the effect of law, when the said office has only the right to make such Rules and Regulations as are necessary to enforce the statutes, and cannot make laws of their own under the guise of rules, and cannot use the Courts to carry out their Moral beliefs regarding the political situation existing in the Country.

IV.**Cause for allowing the issuance of the Writ.**

The writ should issue in the cause of Justice, and certiorari should be had, in the instant cause because no person should be required to service another without the constitutional protections guaranteed to a citizen of the United States, and no person should be convicted of an offense, and placed in jail when the only offense charged is the attempt of the rent control office to stave off like cases, and keep their office and personnel on the pay-roll, and there is no law, statute or regulation forbidding the act.

V.**Prayer For Relief.**

Wherefore, your petitioners pray that the writ of certiorari issue out of and under the seal of this Honorable Court, commanding the United States Circuit Court of appeals for the seventh district, to certify and send to this Court for its review and determination, on a day certain named therein, a complete transcript of the record in the case numbered and entitled on its docket as 9526, Tighe E. Woods, acting housing expeditor, office of housing expeditor, for and on behalf of the United States, plaintiff-appellee v. Walter Fliss and Helen Fliss, defendants-appellants, and that the judgment of the said Circuit Court of appeals be reversed, and that the petitioners herein have such other and further relief as may seem just and proper in said cause.

Respectfully submitted,

WALTER FLISS and HELEN FLISS,

By VERNON TITTLE,

Attorney for petitioners.

CLARENCE W. HORTSMAN,
Of Counsel.

BRIEF.

I**Specific Error Urged.**

The Circuit Court of Appeals erred in finding the petitioners guilty of having received over-ceiling rentals when the pleadings, evidence and facts show that they received no rentals whatsoever.

II.

ARGUMENT.

A.

Under Illinois Law a tenant holding over after notice is, at the election of the landlord, either a holdover tenant, or a trespasser.

In the present case the landlord elected to hold the tenant as a trespasser, and as such owes the hold-over no duties.

Landlord and tenant statute of Illinois.

B.

Emergency Price Control Act of 1942, and the Housing and Rent Control Act of 1947, both are controls on the price to be had for rental property and are not in any way a regulation of the services to be supplied to tenants in possession thereof.

Section 206 A-B of the Housing and Rent control act of 1947.

C.

Regulations had under a statute can only be such as are necessary to carry out the law, and can not be in addition thereto.

In the instant case the respondent herein, sets out as his cause of action a regulation promulgated by the Housing Expeditor which purports to deny the landlord the right to refuse to furnish services to his tenants. This is not true, the regulation merely says that the furnishing of services shall be considered as part of the price charged for the premises. This the Housing Expeditor may have the right to do, but the representation that he has the right to insist upon services being rendered is a false and untrue statement of the law and the Housing Expeditor well knew the same was untrue and made the statements with the express intention of misleading and inducing the Court to further the scheme of the governmental agency in its illegal conduct. The entry of a temporary injunction, without notice is but part of the scheme to secure enforcement with hearing. The whole case was a frost and a sham for the protection of the Housing Expeditor and for the purpose of foisting upon the people a communistic rule of doing what some dictator may order, legal or otherwise, aiding one side against the other, to procure votes, and entrench themselves in office. The comical part of the situation is, that, the people to whom they have given other persons property, have now apparently turned upon the infamous spenders and then in the coming election the "New Deal"—"Communists" have nothing to look forward to except the retaliation of an infuriated people, who want their property, and money, or the prosecution of the parties guilty of such conduct, under the same rules as laid down in this type of proceeding or under Rules laid down in the trials of Europeans had in the war zone.

D.

The Court erred when it found the petitioners herein guilty of having received over ceiling rentals when the evidence shows they received nothing, and erred when the Court held that the findings of fact and conclusions of law are unassailable on appeal.

The right to test the weight of the evidence had always been recognized as a right of a person aggrieved, to have the appeal Court test the sufficiency thereof, and is provided for in the Constitution of the United States. To refuse a citizen the right to have his case heard by a court and to have the Court obey the law of the land has been recognized since the creation of the very government we call the United States of America.

To deny a citizen the right of a hearing, and the right to prosecute his case to the highest Court in the land is inherent in the Constitution.

E.

The Appeals Court erred in finding that constitutional questions were properly raised in the cause, and then dismissing them with the finding that petitioners contentions would seem wholly without merit.

It would seem from reading the decisions of the high Court that a concerted effort is being made to destroy the rights of the people as guaranteed under the constitution, and under the Bill of Rights amended thereto. In the instant case, the law enacted, was found good as a war measure. This was held to be a good exercise of what is termed "Police Powers" and that as an exercise of police powers, they may exceed the "Constitution", and the Bill

of rights embodied therein. The fact that the "Constitution" denies the Federal Government the right to exercise "Police Powers", (10Amd.) and provided that there shall be no enforced servitude, and that private property shall not be taken except for a public use, and then shall control the land within its borders, as well as numerous other ground all give way to the theory of the "Greatest Good" to the "Greatest Numbers", and the "guarantees" of the Bill of Rights cease to exist.

This could be understood if the "War" was being conducted within our country, but was not.

This also could be understood if the property was taken for use by the United States, and used for the "prosecution" of the War, but the property was not requisitioned for war but was turned over to favorite private persons for their own use without regard to the war and in no way promoted the determination of the actual fighting.

Petitioners therefore feel that it would be a useless gesture at this time to urge any Constitutional questions, but stands on the ground of having breached no law, rule or regulation, he was guilty of no offense and the injunction rendered against them should be dissolved.

Conclusion.

Petitioners respectfully urge, that it is the duty of this Court to exercise its discretionary supervision of the lower federal Courts by granting certiorari in this case to the end that, in conformity with the law the judgment of the lower court be reversed, or the cause remanded with directions to enter judgment for petitioners.

Respectfully submitted,

VERNON TITTLE,

Attorney for Petitioners.

CLARENCE W. HORTSMAN,
Of Counsel.